

LETTER OPINION
96-L-232

December 3, 1996

Mr. J. Thomas Traynor, Jr.
Devils Lake City Attorney
509 5th Street
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Devils Lake, ND 58301-0838

Dear Mr. Traynor:

This opinion supersedes the June 5, 1996, opinion which I issued in response to your question regarding whether a local law enforcement agency may release a copy of the accident report required to be filed pursuant to N.D.C.C. § 39-08-10 and, if so, what fees should be charged for a copy. The earlier opinion neglected to address some open records issues which have since been raised.

"The driver of a vehicle involved in an accident resulting in injury to or death of any person, or property damage to an apparent extent of at least one thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol." N.D.C.C. § 39-08-09. Every law enforcement officer who investigates a motor vehicle accident which must be reported is required to make and forward a written report of the accident to the director of the State Department of Transportation. N.D.C.C. § 39-08-10.

N.D.C.C. § 39-08-13(4) provides that the accident reports and the information in them are not privileged or confidential, except for that portion of the report which contains an opinion of the investigating officer as to fault or responsibility for the accident. "If, however, the investigating officer expresses an opinion as to fault or responsibility for the accident, the opinion is confidential and not open to public inspection, except as provided in subsection 5." N.D.C.C. § 39-08-13(4). The portion of the accident report which contains information the statute has classified as confidential would not be subject to the open records provisions of N.D.C.C. § 44-04-18.

The release of a copy of the law enforcement officer's opinion in the report regarding fault or responsibility for a motor vehicle accident is governed by N.D.C.C. § 39-08-13(5), which provides:

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Upon affirmation by a party to the accident, a party's legal representative, or the insurer of any party to the accident that the investigating officer's opinion is material to a determination of liability and upon payment of a fee of five dollars, the director may release a copy of the investigating officer's opinion to the entity requesting the information. The request must be made on an appropriate form approved by the director.

Because N.D.C.C. § 39-08-13(4) prohibits the release of that portion of the accident report containing the investigating officer's opinion as to fault or responsibility for the accident except in accordance with the provisions of subsection 5, it is my opinion that access to that portion of an accident report may not be obtained from local law enforcement offices.

Subsection 4 of N.D.C.C. § 39-08-13 specifically states, however, that the rest of the accident report and the information contained therein are not privileged or to be held confidential. Consequently, the accident report, except for the portion made confidential by statute, is subject to the open records provisions of N.D.C.C. § 44-04-18. It is my opinion, therefore, that the copies of accident reports in the hands of local law enforcement agencies, except for that portion of the report which contains an investigating officer's opinion as to fault or responsibility for the accident, are open records subject to subsection 2 of N.D.C.C. § 44-04-18. Therefore, if a copy is requested from a local law enforcement agency which has the report or a copy of it, the agency must provide a copy at a reasonable fee for making the copy.

N.D.C.C. § 39-08-13(6) provides that the director of the Department of Transportation may furnish any person a copy of the investigating officer's accident report that does not disclose the opinion of the reporting officer if the report shows that the accident is one for which a report was required to be filed under N.D.C.C. § 39-08-09 upon payment of a \$2 fee. Generally, when a fee is set by statute for a copy of a specific document, that fee would control under the rule of statutory construction which states that when there is a conflict between a general statute and a specific statute, the specific statute will control. Here, however, the fee set in N.D.C.C. § 39-08-13(6) for copies of that portion of an accident report which does not contain an investigating officer's opinion is, by its terms, the fee which the Department of Transportation may charge. Therefore, it is my opinion that the general fee established under the guidelines of N.D.C.C. § 44-04-18 (a reasonable fee for

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making the copy) would govern the fees charged by an entity other than the Department of Transportation for a copy of the accident report (excluding that portion of the report which contains an investigating officer's opinion).

It should be noted that accident reports are sometimes required to be filed by persons other than law enforcement officials. However, those reports are generally made confidential by statute and therefore would not fall under the open records provisions of N.D.C.C. § 44-04-18. For instance, all accident reports made by persons involved in accidents or by garages are confidential pursuant to N.D.C.C. § 39-08-14. Likewise, although a city, by ordinance, may "require that the driver of a vehicle involved in an accident shall file with a designated city department a report of such accident or a copy of any report herein required to be filed with the [Department of Transportation]", any such reports are confidential pursuant to N.D.C.C. § 39-08-16 and are subject to N.D.C.C. § 39-08-14. N.D.C.C. § 39-08-16.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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